UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs. **Case No. 08-CR-655(JS)**

CHRISTIAN GEROLD TARANTINO,

Defendant.
_____/

MOTION TO WITHDRAW AS COUNSEL OF RECORD

Defendant Tarantino, by and through undersigned counsel, hereby respectfully moves to allow defense counsel of record Stephen H. Rosen, Esq. and Frank A. Doddato, Esq. to withdraw from the case so that defendant can exercise his right to proceed *in propria persona* with the assistance of appointed "stand-by counsel." As grounds therefor, Tarantino states as follows:

1. On November 3, 2012, undersigned counsel filed the defendant´s "Motion to Dismiss Count One with Prejudice for Failure to State an Offense under 18 U.S.C. § 33" (*citing* Rule 12(b)(3)(B), Fed.R.Crim.P.) ("***at any time while the case is pending***, the court may hear a claim that the indictment … fails … to state an offense."). *See* Doc. 402 at pp.1,4. Tarantino´s most recent substantive motion does not supplement any prior defense motion but raises a new argument based on comprehensive review of the legislative history of 18 U.S.C. §

33 and parallel statutes, which legal analysis has not been conducted in this case until now.

2. On Monday, November 5, 2012, anticipating additional motions, government counsel filed a letter-motion requesting that the Court either preclude Tarantino from filing additional motions or require defendant to show excusable neglect for the failure to file his motions in timely fashion. *See* Doc. 403 at pp.1-4 (government counsel moving to either "preclude" the defendant from filing "supplemental or new post-trial motions" or require him to show excusable neglect). The government´s letter-motion cites *Holland v. Florida*, 130 S.Ct. 2549 (2010), for the proposition that extreme unprofessional conduct by defense counsel will constitute excusable neglect.

3. Tarantino has requested by email attached as "Exhibit A" and by telephone conversation the evening of November 13, 2012, that undersigned counsel and Frank A. Doddato, Esq. withdraw as counsel of record. Further, Tarantino requests permission to exercise his right to proceed *in propria persona* with the assistance of "stand-by counsel." *Please see Faretta v. California*, 422 U.S. 806 (1975) (an accused defendant has the right to conduct his or her own defense). Defendant is cognizant of his mandatory sentencing terms having reviewed his PSR in detail. *See United States v. Salemo*, 61 F.3d 214 (3d Cir. 1995) (defendant has a right to intelligently waive counsel for sentencing).

4. Tarantino believes that during trial counsel failed to file a meritorious motion in limine in the absence of any strategic reason; to-wit: a motion in limine to exclude the testimony of Scott Mulligan under the Court's supervisory powers. According to Tarantino, the in-court testimony of Scott Mulligan at the retrial was unlawfully obtained through government misconduct that *fatally infected* the resulting conviction tainted by his "cooperation." The government presented Mulligan as its star witness at the retrial. However, his court testimony was the product of a cooperation agreement induced by his "false arrest" for a fabricated violation of 18 U.S.C. § 33.

As a consequence of the above, irreconcilable differences now exist between counsel and Tarantino. See New York State Rules of Professional Conduct Rule 1.16.

WHEREFORE, for all the foregoing reasons, undersigned counsel should be allowed to withdraw at the request of Tarantino, *see* Exhibit A (email attached hereto), while duly notifying the Court that the defendant wishes to invoke his right to self-representation.

Respectfully submitted,
LAW OFFICES OF STEPHEN H. ROSEN, P.A.
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s/Stephen H. Rosen

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Counsel for Defendant
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 14, 2012, I electronically filed the foregoing MOTION TO WITHDRAW AS COUNSEL OF RECORD with the Clerk of the Court using CM/ECF. An additional copy was sent to Christian Tarantino at MDC Brooklyn, Metropolitan Detention Center, 80 29th Street, Brooklyn, New York 11232 via U.S. mail.

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s/Stephen H. Rosen